

EXHIBIT 436

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4 IN RE: NATIONAL : MDL No. 2804
5 PRESCRIPTION OPIATE :
6 LITIGATION : Case No. 17-md-2804
7 :
8 APPLIES TO ALL CASES : Hon. Dan A. Polster
9 :
10 :
11 :

12 HIGHLY CONFIDENTIAL
13 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

14 - - - -
15 DECEMBER 20, 2018
16 - - - -

17 VIDEOTAPED DEPOSITION OF JOSEPH EDWARD MILLWARD,
18 taken pursuant to notice, was held at Marcus &
19 Shapira, One Oxford Center, 35th Floor, Pittsburgh,
20 Pennsylvania 15219, by and before Ann Medis,
21 Registered Professional Reporter and Notary Public in
22 and for the Commonwealth of Pennsylvania, on
23 Thursday, December 20, 2018, commencing at 9:07 a.m.

24 - - - -
25 GOLKOW LITIGATION SERVICES
 877.370.3377 ph | 917.591.5672 fax
 deps@golkow.com

1 investigation as it's not required.

2 BY MR. HUDSON:

3 Q. Since you are aware of no orders of
4 hydrocodone combination products that were worthy
5 of being flagged, you agree then there's no review
6 or investigation notes that we can look at to
7 determine what HBC did to evaluate whether or not
8 any of their hydrocodone combination product
9 shipments were at risk for diversion?

10 MR. KOBRIN: Object to form. It
11 misrepresents the record.

12 THE WITNESS: Can you restate that again
13 a little differently?

14 BY MR. HUDSON:

15 Q. Sure.

16 A. I just want to make sure I understand
17 you thoroughly.

18 Q. As you sit here today, are you aware of
19 any reviews or investigations that were done by
20 HBC of any orders of hydrocodone combination
21 products?

22 A. So as we looked at the -- we talked
23 previously and discussed at store 8 inquiring,
24 sending it to the pharmacy district manager to
25 investigate. So I apologize for not fully

1 understanding the force of your question.

2 Q. Other than that one, are there any other
3 investigations you're aware of or reviews that
4 occurred?

5 A. The orders that came up on the flag
6 reports would all have been reviewed.

7 Q. Each and every one of them?

8 A. To determine whether there was any
9 diversion or activity.

10 Q. So Exhibits 10 through 21 that we looked
11 at earlier, those reports, it's your testimony
12 that each and every one of the orders that were
13 listed on those reports were reviewed or
14 investigated for risk of diversion?

15 A. Well, I can't recall every individual
16 case and I can speak to store 8 as it's been
17 refreshed. That information would belong to the
18 pharmacy district manager, pushed to them, to take
19 a look at. And that was before we had other
20 systems to be able to look into movement
21 centrally.

22 Q. I don't understand. What does that
23 mean? You have those Exhibits 10 through 21. We
24 talked about them earlier today. They're these
25 reports. What did it mean they were pushed to the

1 pharmacy district managers to take a look at?

2 A. That's what the -- when you see the
3 store 8, Todd the store flagged, I believe.

4 Q. Are you saying you or George contacted
5 the pharmacy district managers?

6 A. To have them take a look at it, one of
7 us, anybody on that distribution list would have
8 been able to as well. But to send it to them to
9 say you have a store that's on the report, take a
10 look, tell me.

11 Q. Is there any reason why any of those
12 reviews or investigations, why there wasn't a
13 process put in place to track what was being done?

14 MR. KOBRIN: Object to form. Asked and
15 answered.

16 THE WITNESS: You're asking if there was
17 a procedure for recording those investigations?

18 BY MR. HUDSON:

19 Q. My question is: Is there any reason
20 why -- so now I'm asking about the reason -- is
21 there any reason why you did not put a process in
22 place to document in writing the reviews or
23 investigations that were occurring?

24 MR. KOBRIN: Object to form. Asked and
25 answered.

1 THE WITNESS: Not a requirement.

2 BY MR. HUDSON:

3 Q. Would you agree that it would be easier
4 for us to today to try to figure out what HBC did
5 if HBC would have documented in writing the
6 reviews and investigations that occurred?

7 MR. KOBRIN: Object to form, as you
8 repeatedly asked and repeatedly answered for a
9 long period this morning. I want that on the
10 record.

11 THE WITNESS: You're asking an "if"
12 question for me to speculate as to how you would
13 be able to see that. I don't believe I can answer
14 that.

15 BY MR. HUDSON:

16 Q. I'm asking: Would you agree as we sit
17 here today and we're trying to figure out what
18 reviews or investigations occurred, other than
19 store 8 -- is there any other investigation you
20 can tell me about that occurred between November
21 of 2009 and October of 2014 of hydrocodone
22 combination products?

23 MR. KOBRIN: Object to form.

24 THE WITNESS: So 2009 to October '10 I
25 wasn't in the role. Beyond to where after 2013

1 when, as we've established, the report was
2 created, then those reports and movements would
3 have been pushed. The only one we have
4 documentation of, store 8, and it's been three,
5 five years.

6 BY MR. HUDSON:

7 Q. Right. That's all I'm getting at. If
8 we had documented each review or investigation and
9 put those into writing, wouldn't that be easier
10 for us today to be trying to figure out what HBC
11 did between 2009 and 2014?

12 MR. KOBRIN: Object to form.

13 THE WITNESS: As a speculation and
14 crystal ball looking into the magic 8 ball of
15 would this be easier, that's an interesting
16 question.

17 BY MR. HUDSON:

18 Q. Do you want to answer it?

19 MR. KOBRIN: Object to form.

20 THE WITNESS: It's hard to say. I don't
21 have a good -- I'm not going to speculate.

22 BY MR. HUDSON:

23 Q. We do agree though that HBC never
24 blocked a single shipment of hydrocodone
25 combination products during the time that it was a

1 distributor of those products; correct?

2 A. Again, I can't speak to what happened
3 before I was in the role, understanding -- with
4 that qualifier.

5 Q. At least while you were there though,
6 you agree there was never a shipment of
7 hydrocodone combination products that were blocked
8 from shipment at HBC; correct?

9 A. I'm not aware of any shipment that was
10 blocked.

11 Q. You agree that during the time you were
12 the senior manager of compliance, there was never
13 a shipment of hydrocodone combination products
14 where you notified the DEA that they were a
15 suspicious order; right?

16 A. Again, I'm not aware that there was a
17 flag that was deemed to be suspicious.

18 MR. HUDSON: I don't have any further
19 questions.

20 EXAMINATION

21 BY MR. KOBRIN:

22 Q. Mr. Millward, you were asked earlier
23 today about stopping shipments on orders of
24 interest while they were being investigated.

25 Do you recall that line of questioning?

1 A. I do.

2 Q. Tell me, are there different means
3 through which Giant Eagle or HBC investigates an
4 order of interest?

5 A. Yes. We talked at length about the
6 threshold or the Voelker report, so to speak, but
7 there were other systems in place. Giant Eagle
8 invested in two tools from a company by the name
9 of Supply Logics.

10 Supply Logics had two products, Pinpoint
11 Monitor and Pinpoint Audit, one looking at
12 pharmacy purchasing patterns, the other looking at
13 pharmacy dispensing patterns.

14 Giant Eagle also invested in a dedicated
15 person to review those or to have access and
16 review those tools to look for any -- really as a
17 redundant mechanism to look for any kind of
18 movement of controlled substances that could
19 potentially be a flag for investigation.

20 Q. Just to clarify the record, are there
21 situations where through this investigation you
22 could stop an order of interest before it shipped?

23 A. That is correct. If a report was
24 generated or a flag was generated, we had the
25 potential to stop the orders for that store until

1 an investigation could be fully fleshed out.

2 Q. That was if a flag was generated by the
3 person you had hired to do investigation --

4 A. Correct.

5 Q. -- with this Supply Logic program?

6 A. Correct. His name was Jason Mullen.

7 Q. And he could do these investigations and
8 he could stop the shipment when that store made an
9 order if he found there was a reason to
10 investigate that store; is that correct?

11 A. That is correct.

12 Q. Now, were there other situations in
13 which you could not necessarily stop a shipment
14 even after you identified an order of interest?

15 A. So the Kayla report was a report that
16 came out the next day after a store had received
17 the order, and that's where that store had already
18 received it. So it afforded the opportunity to
19 investigate at that point and stop future orders
20 it determined to be suspicious and then
21 subsequently reported as required.

22 Q. Did you ever do that, stop future
23 orders?

24 A. We did.

25 Q. And was there anything else you could do

1 even if the order had been started to be filled at
2 the warehouse or even filled at the warehouse and
3 shipped? Had you lost control of the order?

4 A. Because, as stated earlier, Giant Eagle
5 distributed to itself, we were our customer, we
6 knew everything about the characteristics of our
7 store and had control of and control of the
8 product from where it entered into the DC till it
9 left in a prescription for an end user patient.

10 If something needed to be quarantined and
11 removed from dispensing stock, we had the ability
12 to have our stores pull that aside, if necessary,
13 to prevent it from being dispensed.

14 Q. You talked about a visit to Purdue that
15 you made in order to see their practices. Why did
16 Giant Eagle visit Purdue?

17 A. It was a conference call. It was a
18 conference call that we had. And I believe Purdue
19 reached out to us through the purchasing group,
20 put in contact with me for George and I to have a
21 conference call, again, along the lines of the
22 Thrifty White, for example.

23 It was just another example of reaching out
24 to determine what are some other things other
25 organizations -- now Purdue being very different

1 from us as only a manufacturer and then a
2 distributor to distributors, not dispensing.

3 It was essentially used as intel or insight
4 as to what other organizations are doing so we can
5 continue, as I had spoken repeatedly, improve and
6 evolve and tighten our practices.

7 Q. You said Purdue was very different from
8 you. Can you elaborate on that?

9 A. Purdue is a maker of brand -- well, most
10 known for Oxycontin. We mentioned earlier
11 Hysingla, which was in an email. And they are a
12 manufacturer that has a worldwide presence.

13 Q. They are not, as Giant Eagle is, a
14 regional or, rather, as HBC is a regional
15 distributor to captive pharmacy purchasers?

16 A. No. They are not a regional distributor
17 for captive pharmacies.

18 Q. Or a captive orderer, rather.

19 A. Exactly. The companies are very
20 different.

21 Q. You also mentioned one of the things
22 that you found interesting at Purdue was that they
23 were tracking the percentage of cash purchases.
24 Do you recall that?

25 A. I do.

1 Q. And opposing counsel asked about whether
2 you knew or whether that was something that Giant
3 Eagle did not do. Do you recall that?

4 A. I do.

5 Q. To clarify the record at all, was there
6 any point at which Giant Eagle was able to do that
7 kind of tracking and that kind of investigation?

8 A. So as I had mentioned, Jason Mullen and
9 the Supply Logics tool, the Supply Logics and I
10 believe -- one that was involved in the dispensing
11 patterns, Jason, his job was to go in and
12 investigate, to parse the data, and had the
13 ability to break it down via what the industry and
14 the DEA have defined as red flags to determine,
15 and one of those being percentage of cash
16 prescriptions for target chemical entities like
17 the oxycodone or hydrocodone and
18 hydrocodone-containing products, which by this
19 time rescheduled.

20 So yes, he absolutely had the ability to
21 review that data and to present to us information.

22 Q. And he would preemptively review that
23 data, or would he be responding to orders? What
24 was Jason Mullen doing?

25 A. The great thing about having the tool

1 and having somebody dedicated to use it is they
2 could go on and they could dive into the data and
3 search for movement issues unprompted, so not
4 necessarily directed by intel from a store or a
5 movement pattern of an individual product.

6 And he could find -- he could look into that
7 and get as granular as creating geographical maps
8 of the patients and the doctors to help better
9 understand where those prescriptions were coming
10 from.

11 Q. Did this help you to preempt potential
12 orders of interest?

13 A. This did. It did help us prevent and
14 stop orders for stores, again, with buprenorphine.

15 Q. You mentioned that you attended a DEA
16 conference in 2013. Do you recall that?

17 A. I do.

18 Q. At that conference, do you recall any
19 discussions at all about having written policies
20 in regard to suspicious order monitoring?

21 A. I do not.

22 Q. Do you recall there being any discussion
23 at all about requirements to maintain documents of
24 investigations pursuant to your policies?

25 A. I do not.

1 Q. Opposing counsel just asked you several
2 questions about if you had retained such documents
3 or if you had had some kind of a retention policy
4 and a recording policy that recorded every single
5 investigation you conducted, it would make things
6 easier for him. Do you recall that?

7 A. I do recall that.

8 Q. We do, however, have the reports that
9 you referred to as the Voelker reports that are
10 daily reports, and those show every single order
11 that was flagged. Is that accurate?

12 A. That's correct.

13 Q. By the Voelker system, not by the other
14 controls that we have in place, but by the Voelker
15 system, does that show everything that was
16 flagged?

17 A. Correct, based on the thresholds.

18 Q. And there were over a thousand reports
19 produced from that system; is that correct?

20 A. To be honest, I don't know an
21 accumulated number.

22 Q. Well, those came out daily from the
23 period which it started until the end of your
24 tenure at Giant Eagle; correct?

25 MR. HUDSON: Object to form.